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P O BOX 3267  
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In re Application of  
James M. Tour et al  
Application No. 09/912,923  
Filed: July 25, 2001  
Attorney Docket No. 1789-05303

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: **OFFICE OF PETITIONS**  
: **DECISION ON PETITION**  
: **UNDER 37 CFR 1.78(a)(3)**  
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 23, 2002, to accept an unintentionally delayed claim under 35 USC § 120 of one or more prior filed copending nonprovisional applications, namely, Application No. 09/488,339, filed January 20, 2000, and Application No. 09/551,716, filed April 18, 2000.

The petition is **granted**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition must be accompanied by:

- (1) the surcharge of \$1280 set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional; and
- (3) the specification must contain or be amended to contain a reference to each prior filed copending nonprovisional application or be included in an application data sheet (ADS) (37 CFR 1.76). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on July 25, 2001 and was copending with Application Nos. 09/488,339, filed January 20, 2000 and 09/551,716, filed March 20, 2000, at the time of filing, for which priority is claimed. A reference to the prior nonprovisional applications has been included in an application data sheet (ADS), which was filed concurrently with the instant petition under 37 CFR 1.78(a)(3).

The reference to the prior filed nonprovisional applications was not included in the manner specified in 37 CFR 1.78(a)(2) (i.e., in an ADS or in the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2). Therefore, since the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2), and since the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 USC § 120, the petition to accept an unintentionally delayed claim for priority of prior filed nonprovisional Application Nos. 09/488,339, filed January 20, 2000, and 09/551,716, filed April 18, 2000, is granted as of the date of filing of the petition.

Any inquiries concerning this decision may be directed to the undersigned at 703-305-8680.

This application is being forwarded to the Office of Initial Patent Examination Division (OIPE) to await a reply to the Notice to File Missing Parts mailed September 17, 2001, or, if filed, to associate the reply with the file. After association of the reply to the Notice of September 17, 2001 with the file, OIPE will mail out a corrected filing receipt with the corrected continuity data and a projected publication date. Thereafter, the application will be forwarded to Technology Center AU 2818 for processing the ADS filed January 23, 2002 and for consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(3) for the benefit of prior filed nonprovisional Application Nos. 09/488,339 and 09/551,716, filed January 20, 2000 and April 18, 2000, respectively.



Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy